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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/169,776 10/08/98 KARAKASOGLU

A A-65600/HCH

EXAMINER

GM32/0302  
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ART UNIT

PAPER NUMBER

3736

**DATE MAILED:**

03/02/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>09/169,776</b>	Applicant(s) <b>Karakasoglu et al.</b>
	Examiner <b>Michael Astorino</b>	Group Art Unit <b>3736</b>

Responsive to communication(s) filed on Nov 15, 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-28 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 2, 5-8, 16-19, 21, 23, 24, 27, and 28 is/are allowed.

Claim(s) 1, 3, 4, 9-15, 20, 22, 25, and 26 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 2/8/00 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent 5797852 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-4, 9-15, 20, 22, and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bowers et al. (4802485)

In regards to claims 1, 3-4, 9-15, 20, 22, and 25-26, Bowers et al. discloses monitoring breath by sensing air flow from a breathing sensor (14) comprising a microphone (98) to sense air flow, providing a digital combined real time signal indicative of the patient breathing (column 3, lines 39-43), displays signals (column 2, lines 55-57) and providing means to secure the device adapted to extend around the ears of the patient (column 3, lines 44-61).

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***Response to Arguments***

4. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

5. Claims 2, 5-8, 16-19, 21, 23-24, and 27-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is (703) 306-9067.



M. Astorino

February 28, 2000



CARY O'CONNOR  
SUPERVISORY PATENT EXAMINER  
GROUP 3700